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provides the requirements and restrictions for a savings and holding company to be treated as a financial holding company for the purpose of engaging in financial holding company activities. This subpart does not apply to savings and loan holding companies described in section 10(c)(9)(C) of the HOLA (12 U.S.C. 1467a(c)(9)(C)).

§ 238.62 Definitions.

For the purposes of this subpart:

(a) *Financial holding company activities* refers to activities permissible under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) and § 225.86 of this chapter.

(b) [Reserved]

§ 238.63 Requirements to engage in financial holding company activities.

(a) *In general.* In order for a savings and loan holding company to engage in financial holding company activities:

(1) The savings and loan holding company and all depository institutions controlled by the savings and loan holding company must be and remain well capitalized;

(2) The savings and loan holding company and all depository institutions controlled by the savings and loan company must be and remain well managed; and

(3) The savings and loan holding company must have made an effective election to be treated as a financial holding company.

§ 238.64 Election required.

(a) *In general.* Except as provided below, a savings and loan holding company that wishes to engage in financial holding company activities must have an effective election to be treated as a financial holding company.

(b) *Activities performed under separate HOLA authority.* A savings and loan holding company that conducts only the following activities is not required to elect to be treated as a financial holding company:

(1) *BHC Act section 4(c)(8) activities.* Activities permissible under section 10(c)(2)(F)(i) of the HOLA (12 U.S.C. 1467a(c)(2)(F)(i)).

(2) *Insurance agency or escrow business activities.* Activities permissible under

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section 10(c)(2)(B) of the HOLA (12 U.S.C. 1467a(c)(2)(B)).

(3) *“1987 List” activities.* Activities permissible under section 10(c)(2)(F)(ii) of the HOLA (12 U.S.C. 1467a(c)(2)(F)(ii)).

(c) *Existing requirements apply.* A savings and loan holding company that has not made an effective election to be treated as a financial holding company and that conducts the activities described in paragraphs (b)(1) through (3) of this section remains subject to any rules and requirements applicable to the conduct of such activities.

§ 238.65 Election procedures.

(a) *Filing requirement.* A savings and loan holding company may elect to be treated as a financial holding company by filing a written declaration with the appropriate Reserve Bank. A declaration by a savings and loan holding company is considered to be filed on the date that all information required by paragraph (b) of this section is received by the appropriate Reserve Bank.

(b) *Contents of declaration.* To be deemed complete, a declaration must:

(1) State that the savings and loan holding company elects to be treated as a financial holding company in order to engage in financial holding company activities;

(2) Provide the name and head office address of the savings and loan holding company and of each depository institution controlled by the savings and loan holding company;

(3) Certify that the savings and loan holding company and each depository institution controlled by the savings and loan holding company is well capitalized as of the date the savings and loan holding company submits its declaration;

(4) Certify that the savings and loan holding company and each savings association controlled by the savings and loan holding company is well managed as of the date the savings and loan holding company submits its declaration;

(c) *Effectiveness of election.* An election by a savings and loan holding company to be treated as a financial holding company shall not be effective

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if, during the period provided in paragraph (d) of this section, the Board finds that, as of the date the declaration was filed with the appropriate Reserve Bank:

(1) Any insured depository institution controlled by the savings and loan holding company (except an institution excluded under paragraph (d) of this section) has not achieved at least a rating of “satisfactory record of meeting community credit needs” under the Community Reinvestment Act at the savings association’s most recent examination; or

(2) Any depository institution controlled by the bank holding company is not both well capitalized and well managed.

(d) *Consideration of the CRA performance of a recently acquired savings association.* Except as provided in paragraph (f) of this section, a savings association will be excluded for purposes of the review of the Community Reinvestment Act rating provisions of paragraph (c)(1) of this section if:

(1) The savings and loan holding company acquired the savings association during the 12-month period preceding the filing of an election under paragraph (a) of this section;

(2) The savings and loan holding company has submitted an affirmative plan to the appropriate Federal banking agency for the savings association to take actions necessary for the institution to achieve at least a rating of “satisfactory record of meeting community credit needs” under the Community Reinvestment Act at the next examination of the savings association; and

(3) The appropriate Federal banking agency for the savings association has accepted the plan described in paragraph (d)(2) of this section.

(e) *Effective date of election.*

(1) *In general.* An election filed by a savings and loan holding company under paragraph (a) of this section is effective on the 31st calendar day after the date that a complete declaration was filed with the appropriate Reserve Bank, unless the Board notifies the savings and loan holding company prior to that time that the election is ineffective.

(2) *Earlier notification that an election is effective.* The Board or the appropriate Reserve Bank may notify a savings and loan holding company that its election to be treated as a financial holding company is effective prior to the 31st day after the date that a complete declaration was filed with the appropriate Reserve Bank. Such a notification must be in writing.

(3) *Special effective date rules for the OTS transfer date.*

(i) *Deadline for filing declaration.* For savings and loan holding companies that meet the requirements of § 238.63 and that are engaged in financial holding company activities pursuant to existing authority as of July 21, 2011, an election under paragraph (a) must be filed with the appropriate Reserve Bank by December 31, 2011. The election must be accompanied by a description of the financial holding company activities conducted by the savings and loan holding company.

(ii) *Effective date of election.* An election filed under paragraph (e)(3)(i) of this section is effective on the 61st calendar day after the date that a complete declaration was filed with the appropriate Reserve Bank, unless the Board notifies the savings and loan holding company prior to that time that the election is ineffective.

(iii) *Earlier notification that an election is effective.* The Board or the appropriate Reserve Bank may notify a savings and loan holding company that its election under paragraph (e)(3)(i) of this section to be treated as a financial holding company is effective prior to the 61st day after the date that a complete declaration was filed with the appropriate Reserve Bank. Such notification must be in writing.

(iv) *Filings by savings and loan holding companies that do not meet requirements.*

(A) For savings and loan holding companies that are engaged in financial holding company activities as of July 21, 2011 but do not meet the requirements of § 238.63, a declaration must be filed with the appropriate Reserve Bank by December 31, 2011, specifying:

(1) The name and head office address of the savings and loan holding company and of each depository institution controlled by the savings and loan holding company;

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(2) The financial holding company activities that the savings and loan holding company is engaged in;

(3) The requirements of § 238.63 that the savings and loan holding company does not meet; and

(4) A description of how the savings and loan holding company will achieve compliance with § 238.63 prior to June 30, 2012.

(B) A savings and loan holding company covered by this subparagraph will be subject to:

(1) The notice, remediation agreement, divestiture, and any other requirements described in § 225.83 of this chapter; or

(2) The activities limitations and any other requirements described in § 225.84 of this chapter, depending on which requirements of § 238.63 the savings and loan holding company does not meet.

(f) *Requests to be treated as a financial holding company submitted as part of an application to become a savings and loan holding company.* A company that is not a savings and loan holding company and has applied for the Board's approval to become a savings and loan holding company under section 10(e) of the HOLA (12 U.S.C. 1467a(e)) may as part of that application submit a request to be treated as a financial holding company. Such requests shall be made and reviewed by the Board as described in § 225.82(f) of this chapter.

(g) *Board's authority to exercise supervisory authority over a savings and loan holding company treated as a financial holding company.* An effective election to be treated as a financial holding company does not in any way limit the Board's statutory authority under the HOLA, the Federal Deposit Insurance Act, or any other relevant Federal statute to take appropriate action, including imposing supervisory limitations, restrictions, or prohibitions on the activities and acquisitions of a savings and loan holding company that has elected to be treated as a financial holding company, or enforcing compliance with applicable law.

§ 238.66 Ongoing requirements.

(a) *In general.* A savings and loan holding company with an effective election to be treated as a financial holding company is subject to the same

requirements applicable to a financial holding company, under sections 4(l) and 4(m) of the Bank Holding Company Act and section 804(c) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(c)) as if the savings and loan holding company was a bank holding company.

(b) *Consequences of failing to continue to meet applicable capital and management requirements.* A savings and loan holding company with an effective election to be treated as a financial holding company that fails to meet applicable capital and management requirements at § 238.63 is subject to the notice, remediation agreement, divestiture, and any other requirements described in § 225.83 of this chapter.

(c) *Consequences of failing to continue to maintain a satisfactory or better rating under the Community Reinvestment Act at all insured depository institution subsidiaries.* A savings and loan holding company with an effective election to be treated as a financial holding company that fails to maintain a satisfactory or better rating under the Community Reinvestment Act at all insured deposit institution subsidiaries is subject to the activities limitations and any other requirements described in § 225.84 of this chapter.

(d) *Notice and approval requirements for conducting financial holding company activities; permissible activities.* A savings and loan holding company with an effective election to be treated as a financial holding company may conduct the activities listed in § 225.86 of this chapter subject to the notice, approval, and any other requirements described in §§ 225.85 through 225.89 of this chapter.

Subpart H—Notice of Change of Director or Senior Executive Officer

§ 238.71 Purpose.

This subpart implements 12 U.S.C. 1831i, which requires certain savings and loan holding companies to notify the Board before appointing or employing directors and senior executive officers.